



DEPARTMENT OF ENERGY

[Case Number 2020-020; EERE-2020-BT-WAV-0035]

Energy Conservation Program: Decision and Order Granting a Waiver to Ningbo FOTILE Kitchen Ware Co. Ltd. from the Department of Energy Dishwashers Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of decision and order.

SUMMARY: The U.S. Department of Energy (“DOE”) gives notice of a Decision and Order (Case Number 2020-020) that grants to Ningbo FOTILE Kitchen Ware Co. Ltd. (“FOTILE”) a waiver from specified portions of the DOE test procedure for determining the energy and water consumption of specified dishwashers. Under the Decision and Order, FOTILE is required to test and rate the specified basic models of its dishwashers in accordance with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for dishwashers located at title 10 of the Code of Federal Regulations (“CFR”),

part 430, subpart B, appendix C1 that addresses the issues presented in this waiver. At such time, FOTILE must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

In accordance with section 430.27(f)(2) of title 10 of the CFR, DOE hereby provides notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants FOTILE a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix C1 for specified basic models of dishwashers, and provides that FOTILE must test and rate such products using the alternate test procedure specified in the Decision and Order. FOTILE's representations concerning the energy and water consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and any such representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy and water consumption of these products. (42 U.S.C. 6293(c))

Consistent with 10 CFR 430.27(j), not later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products/equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products/that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27. 10 CFR 430.27(j).

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA, Public Law 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include dishwashers the focus of this document. (42 U.S.C. 6292(a)(6))

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is set forth at 10 CFR part 430, subpart B, appendix C1, “Uniform Test Method for Measuring the Energy Consumption of Dishwashers” (“Appendix C1”).

Any interested person may submit a petition for waiver from DOE’s test procedure requirements. 10 CFR 430.27(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the *Federal Register* a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the *Federal Register* a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(3).

II. FOTILE’s Petition for Waiver: Assertions and Determinations

On October 15, 2020, DOE received from FOTILE a petition for waiver and a petition for interim waiver from the DOE test procedure applicable to dishwashers set forth in Appendix

C1. In its petition for waiver, FOTILE stated that the subject dishwasher models, which FOTILE described as “in-sink” compact dishwashers, do not have a main detergent compartment and have different installation instructions than under-counter or under-sink dishwashers. FOTILE requested that DOE waive sections of the dishwasher test procedure pertaining to installation requirements and placement of the detergent. FOTILE suggested an alternate test procedure to install the dishwasher basic models from the top of a rectangular enclosure (as opposed to the front) and to specify placement of the detergent directly into the dishwasher chamber.

DOE posted the petition on the DOE website, absent any information for which petitioner requested treatment as confidential business information, at:

<https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0035-0001>. On February 8, 2021, DOE published a notification that announced its receipt of the petition for waiver and granted FOTILE an interim waiver. 86 FR 8548 (“Notification of Petition for Waiver”). In the Notification of Petition for Waiver, DOE reviewed FOTILE's application for an interim waiver and the alternate test procedure requested by FOTILE. DOE also reviewed manufacturer information available on-line, including the operation manual³ for the specified basic models. Based on the assertions in the petition and DOE's review, DOE initially determined that the installation and detergent placement characteristics of the subject basic models prevent testing of the basic models according to the prescribed test procedure. 86 FR 8548, 8551. Also based on this review, DOE initially determined that the suggested alternate test procedure appeared to allow for the accurate measurement of the energy and water consumption of the specified basic models, while alleviating the testing problems associated with FOTILE's implementation of dishwasher testing for these basic models. *Id.* Consequently, DOE determined that FOTILE's petition for waiver likely would be granted. *Id.* Furthermore, DOE determined that it was

³ The operation manual is available in the docket at <https://www.regulations.gov/document/EERE-2020-BT-WAV-0035-0002>.

desirable for public policy reasons to grant FOTILE immediate relief pending a determination of the petition for waiver. *Id.*

In the Notification of Petition for Waiver, DOE noted that FOTILE's alternate test procedure specified a test enclosure that differs from the installation instructions provided in the operation manual. 86 FR 8548, 8549. Specifically, the alternate test procedure retained a requirement specified in Section 2.1 of Appendix C1 that the enclosure be brought into the closest contact with the appliance as allowed by the configuration of the dishwasher. In the case of FOTILE's basic model, this would include close contact between the bottom of the enclosure and the underside of the in-sink dishwasher. The height of the product is 21-5/16 inches (541 millimeters (“mm”). Bringing the bottom of the enclosure into the closest possible contact with the dishwasher (*i.e.*, creating an enclosure height of around 21-5/16 inches) would conflict with the installation instructions in the operation manual, which specify a minimum enclosure height of 35-7/16 inches (900 mm). DOE stated that this difference in installation may potentially result in differing heat losses from the dishwasher during testing as compared to installation in the field that could impact energy consumption during the cycle. *Id.* DOE requested comment on any such potential impacts on energy consumption as a result of the test enclosure specifications in the alternate test procedure, and whether installation should be required in accordance with the operation manual to provide results that are more representative of average use. *Id.* DOE also solicited comments from interested parties on all other aspects of the petition and the specified alternate test procedure. *Id.* DOE received no comments in response to the Notification of Petition for Waiver.

For the reasons explained here and in the Notification of Petition for Waiver, absent a waiver, the basic models identified by FOTILE in its petition cannot be tested and rated for energy and water consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by FOTILE and concludes that, with the modification discussed below, it will allow for the accurate

measurement of the energy use of the product, while alleviating the testing problems associated with FOTILE's implementation of DOE's applicable dishwashers test procedure for the specified basic models. The alternate test procedure required under this Decision and Order modifies that specified in the Interim Waiver Order. In the alternate test procedure required under this Decision and Order, the height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. While DOE did not receive any comments on this topic in response to the Notification of Petition for Waiver, installing compact in-sink dishwashers according to manufacturer's instructions is representative, particularly since the manufacturer's instructions explicitly provide a minimum height for the cabinetry in which the dishwasher is installed. Additionally, the alternate test procedure requirements in the Interim Waiver Order may result in varying placement of the enclosure bottom, given that the drain pipe at the bottom of the unit could be configured differently in different installations, resulting in different enclosure heights corresponding to the closest contact that the configuration of the dishwasher would allow. This could introduce variability in the measured energy consumption. The specification to install the subject basic models consistent with the installation instructions provided in the operation manual will ensure reproducibility of test results and further ensure the test procedure provides results that are representative of the average use cycle.

As provided in 10 CFR 430.27(i), to the extent that FOTILE has already certified the subject basic models using the procedure permitted in DOE's grant of the interim test procedure waiver, FOTILE is not required to re-test and re-rate those basic models so long as: It used that alternative procedure to certify the compliance of the basic model after DOE granted the company's interim waiver request; changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient; and FOTILE does not modify the certified rating.

For subsequent certification of the subject basic models, FOTILE must test and rate the specified dishwasher basic models according to the alternate test procedure specified in this Decision and Order.

This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. FOTILE may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 430.27(g). FOTILE may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, FOTILE may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

As set forth above, the test procedure specified in this Decision and Order is not the same as the test procedure offered by FOTILE. If FOTILE believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, FOTILE may submit a request for modification under 10 CFR 430.27(k)(2) that addresses the concerns that DOE has specified with that procedure. FOTILE may also submit another less burdensome alternative test procedure not expressly considered in this notification under the same provision.

III. Consultations with Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission staff concerning the FOTILE petition for waiver.

IV. Order

After careful consideration of all the material that was submitted by FOTILE and the various public-facing materials (*e.g.*, marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, in this matter, it is **ORDERED** that:

(1) For certifications required on and after the date of publication of this Order in the *Federal Register*, FOTILE must test and rate the following dishwasher basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic Model
FOTILE	SD2F-P1X
FOTILE	SD2F-P1XL

(2) The alternate test procedure for the FOTILE basic models listed in paragraph (1) of this Order is the test procedure for dishwashers prescribed by DOE at 10 CFR part 430, subpart B, appendix C1, with the modifications provided below. All other requirements of Appendix C1 and DOE's other relevant regulations remain applicable.

In section 2.1, Installation, add at the end of the section:

A compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a front, a bottom, a back, and two sides. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. The

height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. The dishwasher must be installed from the top and mounted to the edges of the enclosure.

In section 2.10, Detergent, add at the end of the section:

For compact in-sink dishwashers with a combination sink that have neither prewash program nor a main detergent compartment, determine the amount of main wash detergent (in grams) to be added directly into the washing chamber according to section 2.10.2 of this appendix.

(3) *Representations.* FOTILE may not make representations about the energy and water use of a basic model listed in paragraph (1) of this Order for compliance or marketing, unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) DOE issues this waiver on the condition that the statements, representations, test data, and information provided by FOTILE are valid. If FOTILE makes any modifications to the controls or configurations of these basic models, such modifications will render the waiver invalid with respect to that basic model, and FOTILE will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, FOTILE may request

that DOE rescind or modify the waiver if FOTILE discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) FOTILE remains obligated to fulfill any applicable requirements set forth at 10 CFR part 429.

Signing Authority

This document of the Department of Energy was signed on May 11, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 12, 2021.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.